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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 08-0237 EMC
)	
Plaintiff,)	
)	STIPULATION AND [PROPOSED] ORDER
v.)	RE-SETTING STATUS HEARING DATE
)	AND DOCUMENTING EXCLUSION OF
DAVID NOSAL,)	TIME UNDER THE SPEEDY TRIAL ACT
)	
Defendant.)	

The United States, by and through Assistant United States Attorney Kyle F. Waldinger, and the defendant David Nosal, by and through his counsel Steven F. Gruel, submit this stipulation and proposed order to continue the August 29, 2012, status hearing to September 19, 2012, and to exclude time under the Speedy Trial Act from the date of this stipulation to September 19, 2012. The parties stipulate, and jointly inform the Court, as follows:

1. On or about February 2, 2010, the United States filed its Notice of Appeal in this matter, seeking reversal of the District Court's dismissal of several counts of the Superseding Indictment. At that time, the District Court vacated the trial schedule.

2. After lengthy proceedings in the Ninth Circuit Court of Appeals, on April 10, 2012, an en banc panel of the Ninth Circuit issued its opinion affirming the district court's dismissal order.

STIP. & [PROPOSED] ORDER RE-SETTING STATUS HEARING DATE
AND DOCUMENTING EXCLUSION OF TIME [CR 08-0237 EMC]

1 3. The Solicitor General did not file a petition for a writ of certiorari to the Supreme
2 Court. Accordingly, on August 2, 2012, the United States moved the Ninth Circuit to issue the
3 mandate. The Ninth Circuit did so on August 3, 2012.

4 4. On August 9, 2012, this Court set a status hearing for August 29, 2012, and
5 excluded time from August 7 to August 29, 2012. Since that time, counsel for the parties have
6 learned that the defendant Nosal has a conflict with that date, in that he has made plans to travel
7 to Arlington National Cemetery with his mother to visit the grave of his father. Based on the
8 unavailability of defense counsel between August 29, 2012, and September 19, 2012, the parties
9 stipulate and agree that time should be excluded from the date of this stipulation to September
10 19, 2012, to ensure continuity of defense counsel under 18 U.S.C. § 3161(h)(7)(B)(iv). In
11 addition, given the amount of time that this case has been on appeal in the Ninth Circuit, both
12 parties also stipulate and agree that continuing the August 29, 2012, date to September 19, 2012,
13 will give both parties time to re-acquaint themselves with the facts of the case and to effectively
14 prepare for the status hearing. Finally, counsel for the United States is currently scheduled to be
15 out of the office on August 29, 2012, based on child care issues. Continuing the August 29,
16 2012, date will allow counsel for the United States to address these issues.

17 5. For these reasons, the parties jointly request that the Court **VACATE** the August
18 29, 2012, status hearing, and re-set that hearing for September 19, 2012. The parties also jointly
19 request that the Court make a finding of excludable time under the Speedy Trial Act from the

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date of this stipulation to September 19, 2012, based on the unavailability of defense counsel and government counsel, the need for continuity of defense counsel and government counsel, and the need for effective preparation of both parties' counsel.

SO STIPULATED.

DATED: August 22, 2012

MELINDA HAAG
United States Attorney

/s/
KYLE F. WALDINGER
Assistant United States Attorney

DATED: August 22, 2012

/s/
STEVEN F. GRUEL
Attorney for the defendant David Nosal

[PROPOSED] ORDER

For the reasons stated above, the parties' joint request that the August 29, 2012, status hearing be vacated is GRANTED. The parties are ORDERED to appear before the Court for a status hearing on September 19, 2012, at 2:30 p.m. Based on the facts set forth in the parties' stipulation, the Court finds that, taking into the account the public interest in the prompt disposition of criminal cases, granting a continuance until September 19, 2012, is necessary based on the need for continuity of defense counsel and government counsel and for the effective preparation of counsel for both parties. *See* 18 U.S.C. § 3161(h)(7)(B)(iv). Given these circumstances, the Court finds that the ends of justice served by excluding the period from the date of the parties' stipulation (August 22, 2012), to September 19, 2012, outweigh the best interest of the public and the defendant in a speedy trial. *Id.* § 3161(h)(7)(A).

DATED: August 23, 2012

EDWARD M. CHEN
United States District Judge

STIP. & [PROPOSED] ORDER RE-SETTING STATUS HEARING
AND DOCUMENTING EXCLUSION OF TIME [CR 08-02]

